

Decision and reasons for decision

In the matter of disciplinary action against Crown Melbourne Ltd pursuant to section 20(1)(b) of the *Casino Control Act 1991* (Vic).


Commission	Fran Thorn, Chair Andrew Scott, Deputy Chair Dr Ron Ben-David, Deputy Chair Claire Miller, Commissioner Chris O'Neill APM, Commissioner
Date of decision	11 September 2024
Date of reasons	14 October 2024
Decision	<p>For the reasons attached to this decision, the Victorian Gambling and Casino Control Commission has determined:</p> <ol style="list-style-type: none"> to take disciplinary action against Crown Melbourne Ltd under section 20(4) of the <i>Casino Control Act 1991</i> (Vic), for contraventions of section 76C of the <i>Casino Control Act 1991</i> (Vic); that the appropriate disciplinary action is the imposition of a fine of \$2,000,000, per section 20(4)(a) of the <i>Casino Control Act 1991</i> (Vic), payable within 28 days of the date of these reasons; and to issue a notice to Crown Melbourne Ltd pursuant to section 20A of the <i>Casino Control Act 1991</i> (Vic) to require Crown to pay the Commission's reasonable costs and expenses of this disciplinary action.
Signed	
	Fran Thorn
	Chair

Table of Contents

Introduction	3
Summary	4
Background	4
Findings	4
Section 76B contraventions	4
Section 76C contraventions	5
Contraventions	6
What is the appropriate sanction?	6
Number of Fines	7
Setting the fine in this case	7
Costs	9

Introduction

- 1) This is the Victorian Gambling and Casino Control Commission's (**Commission**) determination of what, if any, disciplinary action to take against Crown Melbourne Ltd (**Crown**) under section 20(4) of the *Casino Control Act 1991* (Vic) (**Act**), having issued a Notice to Show Cause on 14 June 2024 (**Notice**) why disciplinary action should not be taken on the grounds specified in the Notice.
- 2) Since 1 August 2023, it is an offence for a casino operator if:
 - a. an excluded person enters or remains in a casino, unless the casino has taken all reasonable steps to prevent that excluded person from entering or remaining in the casino, per section 76B of the Act; and
 - b. an excluded person plays a game in the casino, pursuant to section 76C of the Act.
- 3) A person can voluntarily obtain an exclusion order under section 72(2A) of the Act, to be prohibited from entering or remaining in a casino (**Self-excluded person**).
- 4) The Commission detected the alleged contraventions of sections 76B and 76C of the Act through ongoing monitoring of Crown's operations.
- 5) The Commission subsequently issued Crown with the Notice for alleged contraventions of sections 76B and 76C of the Act, for the period between 1 October 2023 and 25 May 2024 (**Relevant Period**), where:
 - a. 427 Self-excluded persons gained access to Crown in 750 instances, allegedly in contravention of section 76B of the Act; and
 - b. within those 427 Self-excluded persons, there was a subset of 242 Self-excluded persons gambling in 451 separate instances, allegedly in contravention of section 76C of the Act.
- 6) On 14 June 2024, the Commission also issued a Direction to Crown, requiring Crown to engage an Independent Expert to report on the effectiveness of Crown's systems and controls in detecting and preventing excluded patrons from entering the casino (**Direction**).
- 7) On 2 July 2024, following an extension, Crown provided a written submission in response to the Notice. In particular, Crown stated that:
 - 8) it had taken various measures and will implement further measures, to prevent excluded persons from entering the casino and gambling; and
 - 9) it had taken "all reasonable steps" to prevent excluded persons from entering and remaining in the casino.
- 10) The Commission has considered all the materials provided to it by Crown in this matter.

Summary

- 11) For the reasons that follow, the Commission has determined that the appropriate disciplinary action is to fine Crown **\$2,000,000** for contraventions of section 76C of the Act.
- 12) The Commission has also determined to take no disciplinary action against Crown for contraventions of section 76B of the Act.

Background

- 13) This disciplinary action arose from alleged contraventions of sections 76B and 76C of the Act, during the Relevant Period.
- 14) In summary, during the Relevant Period:
 - a. 427 Self-excluded persons gained access to Crown in 750 instances; and
 - b. 242 of these Self-excluded persons gambled on 451 separate instances.

Findings

Section 76B contraventions

- 15) The Commission identified that 427 Self-excluded persons had entered and/or remained in the casino during the Relevant Period. The Commission relied on records of reports of instances of Self-excluded persons gaining access to the casino during the Relevant Period. Crown accepts and acknowledges that there were 427 excluded persons who entered the casino, in the Relevant Period.
- 16) However, entry into the casino of itself is not sufficient to establish a contravention of section 76B of the Act. To establish a contravention of section 76B of the Act, the Commission needs to be satisfied that Crown did not take “all reasonable steps” to prevent excluded patrons from entering and/or remaining in the casino.
- 17) Crown has submitted that they have taken all reasonable steps to prevent excluded persons from entering and/or remaining in the casino. The Commission acknowledges that Crown has taken some steps to strengthen its controls for policing exclusion orders.
- 18) However, the volume of instances, namely 750 cases of persons entering and/or remaining in the casino during the Relevant Period is of significant concern. This highlights potential gaps in Crown's systems and controls for preventing excluded persons from entering the casino. Despite the steps taken thus far, these occurrences indicate that the implemented measures have not sufficiently mitigated the risks.
- 19) Crown has been on notice, even prior to the legislation coming into effect in August 2023, of the need to enhance its monitoring of excluded persons. While the casino did take some action, including implementing necessary changes when issues were flagged, the recurrence of breaches suggests that these actions have not been fully effective. Furthermore, Crown itself has

acknowledged the need for further prospective steps, underscoring that additional reasonable actions could have, and should have, been taken to better address this issue

- 20) Further scrutiny is required to assess, what additional steps Crown should take for ongoing improvements in its surveillance and enforcement, particularly to address the behaviors of patrons' intent on contravening their self-exclusion order.
- 21) To that end, the Commission issued Crown a Direction on 14 June 2024. The Direction requires Crown to engage an Independent Expert to report on the effectiveness of Crown's systems and controls for policing excluded patrons from entering the casino. Crown will be required in due course to implement, as appropriate, the recommendations of the Independent Expert.
- 22) In light of the Direction, the Commission has determined not to take any disciplinary actions against Crown for the alleged contraventions of section 76B of the Act at this time.
- 23) The Commission will continue to closely scrutinise Crown's implementation and compliance with the Direction. The Commission will also continue its close ongoing monitoring of Crown's compliance with provisions of the Act pertaining to excluded patrons entering and/or gambling at the casino.

Section 76C contraventions

- 24) The Commission identified that 242 Self-excluded persons had gambled a total of 451 instances during the Relevant Period. The Commission relied on the records of reports of instances of Self-excluded persons gambling at the casino. Crown accepts and acknowledges that there were 451 occasions of Self-excluded persons gambling at the casino in the Relevant Period.
- 25) The Commission considers contraventions under section 76C of the Act to be the more serious contraventions, as they concern the additional direct gambling harm inflicted on excluded patrons. In this case, it involves Self-excluded persons who had previously suffered from gambling-related issues and, through their own application, voluntarily opted to exclude themselves from the casino.
- 26) The length of time that some of the 242 Self-excluded persons remained in the casino is deeply concerning. Information provided by Crown reveals that, on multiple occasions during the Relevant Period, Self-excluded persons were able to stay on the premises for over an hour, with some remaining for as long as 10 hours. Information provided by Crown also shows that during several of these instances, Self-excluded persons engaged in gambling activity up to 27 separate instances during the Relevant Period.
- 27) Allowing Self-excluded persons to remain on the premises for extended periods not only undermines the integrity of the exclusion system but also exposes these vulnerable individuals to heightened risk of gambling harm. The failure to promptly identify and remove Self-excluded persons from the casino raises serious concerns about the adequacy of the Crown's surveillance and monitoring of excluded persons.

Contraventions

- 28) In light of the above, the Commission concludes as follows:
- a. not to take disciplinary action for alleged contraventions of section 76B of the Act; and
 - b. that a fine is the appropriate disciplinary action for contraventions of section 76C of the Act in the Relevant Period.
- 29) In the circumstances set out above, the Crown has contravened section 76C of the Act on 451 instances and therefore the grounds for disciplinary action under section 20(1)(b) of the Act has been established.

What is the appropriate sanction?

- 30) After the Commission's consideration of Crown's submissions per section 20(3) of the Act, section 20(4) of the Act provides that:
- The Commission may then take disciplinary action against the casino operator as the Commission sees fit and does so by giving written notice to the casino operator—
- (a) of the cancellation or suspension of the casino licence, the variation of the terms of the licence or the imposition of the fine; or
 - (b) in the form of a letter of censure; or
 - (c) any combination of the sanctions referred to in paragraph (a) or paragraphs (a) and (b).
- 31) As stated above, the Commission considers that a fine would be the appropriate sanction for contraventions of section 76C of the Act.
- 32) The Commission's decision for the imposition of a fine for section 76C of the Act is informed by the following considerations:
- a. first, there are multiple contraventions of section 76C of the Act over an extended period of time. That is, there are 451 individual contraventions of section 76C of the Act, in a period of 8 months since 1 October 2023 (being the Relevant Period);
 - b. second, Crown's compliance with the provisions of section 76C of the Act is vitally important. These are safeguards aimed to protect and minimise exposure to gambling harm. Crown is required to act as a gatekeeper to police these requirements. Crown's contraventions of section 76C of the Act would not be adequately denounced, and general and specific deterrence would not be adequately achieved, without the imposition of a fine; and
 - c. thirdly, as stated above, the Commission acknowledges that Crown has taken some steps to improve its systems and process to prevent excluded patrons from entering the Casino. This is a mitigating factor such that the Commission considers that a fine in the lower range is appropriate. However, in the Commission's view, improvement steps, including future steps, do not outweigh the need for the imposition of a fine.

Number of Fines

- 33) It is open for it to impose a fine for each individual contravention of section 76C of the Act. However, the Commission has decided that it is appropriate,¹ in specific circumstances of this case, to impose a single, rolled-up, fine for the section 76C contraventions.
- 34) The Commission has taken the view that proceeding in this way is appropriate because, not only is the single fine referred to in the decision sufficient to achieve deterrence, the alternative approach of imposing a fine for every single contravention may have the potential to produce a result that is disproportionate to that which can be achieved with the current single fine approach.

Setting the fine in this case

- 35) The Commission has set out its approach to setting a fine when taking disciplinary actions in other determinations and does not intend to set out that approach here. Rather, the Commission provides its reasons for concluding that a fine of \$2,000,000 is appropriate, in this case, payable within 28 days from the date of these reasons.

Seriousness of the contraventions and the circumstances in which the conduct took place

- 36) The maximum penalty, being \$100 million that can be imposed as a fine for disciplinary action, serves as a benchmark for the most serious category of contraventions. The Commission acknowledges that the contraventions of section 76C of the Act do not fall into this highest category for Crown. However, the Commission remains mindful that such classifications are subjective and may vary in interpretation among individuals. It would, however, be inappropriate to dismiss these contraventions as insignificant or not serious simply because they are not classified as the most severe.
- 37) The exclusion of individuals from a casino is a critical regulatory measure designed to protect vulnerable persons and maintain the integrity of the gaming environment. The Act mandates these exclusions to minimise gambling harm. The introduction of the offence provisions and grounds for disciplinary action against the casino were considered necessary by the legislature to oblige the casino to take steps to protect vulnerable gamblers from harm.
- 38) Further, all of the section 76C contraventions relate to individuals who have themselves requested to be excluded from the casino. By allowing these at-risk patrons to gamble, Crown has exposed these individuals to further gambling harm. This is contrary to the Crown's duty of care to its patrons, and in particular, to those who have self-excluded from gambling.

¹ See *Australian Building and Construction Commissioner v Pattinson* [2022] HCA 13 at [96], where the course of conduct principle applies both to ensure that where multiple offences [or contraventions] are found on the same facts so that the appropriate penalty is not imposed twice, and where the offences are part of a series, it is necessary to ensure that the punishment is for "the entirety of the (criminal) conduct of the same or similar character, rather than the several acts or omissions constituting the separate offences."

- 39) However, the Commission accepts that:
- a. section 76C contraventions by the casino stemmed from system and control failures rather than deliberate or egregious disregard by Crown for regulatory obligations;
 - b. Crown has taken steps, and continues to take further steps, to improve its processes and controls to prevent excluded patrons from entering the casino and gambling. These include improvements to its physical security, use of technology as well as training measures; and
 - c. despite Crown's efforts to enforce exclusion orders, there were several instances of some individuals who, despite being warned, continued to find ways to enter the casino and gamble. These individuals demonstrated persistent attempts to circumvent the exclusion measures in place, exploiting vulnerabilities in the casino's systems.

General deterrence

- 40) General deterrence plays a critical role in determining penalties for a casino operator who fails to enforce an exclusion order. It aims to discourage not only Crown but also other licensees or regulated entities from committing similar contraventions in the future.

Specific deterrence

- 41) The Crown today is markedly different from the entity it was prior to the Royal Commission.²
- 42) The findings of the Royal Commission brought to light significant shortcomings in governance and regulatory compliance at Crown. In response, Crown has undertaken, and continues to undertake, extensive reforms to address these issues and transform its operations to ensure compliance with the law. The Commission continues to closely monitor Crown's transformation program.
- 43) It is appropriate that Crown's ongoing transformation in its governance and regulatory compliance be reflected in determining the quantum of penalty. Therefore, in the current circumstances, it warrants a much lower penalty, compared to prior cases, where such reformative transformation actions were absent at the casino.
- 44) The Commission has taken disciplinary action against Crown on 4 previous occasions, all of which relate to conduct brought to light at the Royal Commission. Significant financial penalties to the sum of \$250 million in total were imposed on Crown for serious misconduct, including for conduct that was intentional and for criminal conduct.
- 45) The section 76C contraventions currently before the Commission, in the Commission's view, do not reach as high or similar levels of misconduct as seen in these previous disciplinary actions taken against Crown. Rather, this is an operational control failure, not deliberate actions. Acknowledging this context is important in assessing the proportionality and appropriateness of the penalty.

² During 2021, a Royal Commission was conducted into the Victorian Casino Operator and Licence, being an inquiry into the suitability of Crown Melbourne Limited to hold a casino licence.

Cooperation

- 46) Crown has demonstrated willingness to cooperate and engage constructively with the regulator following the Royal Commission, and as part of the investigation into these breaches. This is a factor that warrants consideration of a lower penalty.

Costs

- 47) In the course of exercising its compulsory powers for the purpose of this matter, the Commission may also require Crown Melbourne to pay the Commission its reasonable costs.
- 48) The Commission has decided that Crown Melbourne should pay the Commission's costs of this disciplinary action.
- 49) The Commission will instruct its staff to prepare a notice in accordance with section 20A of the Act for the purpose of requiring Crown to pay the Commission's costs accordingly.